

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

ORDER

Narayan Lal.

Versus

Prakash Chand.

S.B. Criminal Misc. Petition No. 1152/2005
against the order dated 6-9-2005 passed
by the Additional Sessions Judge, Bali, Camp
Sumerpur, in Criminal Revision No.14/2005.

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Date of Order:

September 08, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. A.K. Acharya, for the petitioner.
Mr. Sunil Joshi, for the non-petitioner.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 6-9-2005 passed by the Additional Sessions Judge, Bali, Camp Sumerpur, district Pali (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 14/2005, whereby the revision petition filed by the petitioner against the order dated 19-3-2005 passed by the Judicial Magistrate, Sumerpur, district Pali (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the parties.
Carefully gone through the orders passed by the trial Court as

well as the Revisional Court.

It is contended by the learned counsel for the petitioner that a blank cheque duly signed by the petitioner was lost and the loss of cheque was immediately reported to the police as well as to the concerned bank and it appears that the cheque, which the petitioner lost, somehow fell in the hands of the non-petitioner, who filled up the cheque and deposited in the bank for encashment, which was returned on the ground of "stop payment" and, therefore, in order to establish that the cheque was not given for the purpose of discharge of any debt or any liability, before the trial Court, the petitioner, who is facing trial for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter), filed an application under Section 45 of the Evidence Act requesting the trial Court to examine the averments made in the cheque by a handwriting expert to ascertain that the averments made in the cheque were not made by the petitioner but the same were made by the complainant/non-petitioner. The trial Court dismissed the application and on revision, the Revisional Court also dismissed the revision.

Right from the inception, the case of the petitioner is that he lost the said cheque and though it was duly signed but neither the name of payee nor the amount was mentioned therein and the moment he lost the cheque, the loss of cheque

was reported to the police as well as the concerned bank and, therefore, the bank recorded "stop payment" and to prove this fact, the burden is on the petitioner and, therefore, in order to prove this fact, he requested the trial Court to send the cheque for examination of handwritings on the cheque by handwriting expert and, therefore, learned counsel for the petitioner submits that both the Courts below fell in error in not considering this aspect of the matter. Learned counsel also argued that a crime report was lodged against the non-petitioner for forgery, cheating etc. with regard to the very cheque in question and, therefore, it cannot be said that such a plea has been developed by the petitioner at a subsequent stage.

From the perusal of the orders of the courts below, it appears that right from the very beginning, the petitioner came with the case that he lost the said cheque. Even when he received the notice demanding the cheque amount, in reply to the said notice, he categorically stated that the non-petitioner is not even known to him and he had not given any cheque to the non-petitioner as there was no dealing between the petitioner and the non-petitioner and this shows that right from the very beginning, the petitioner came with the case that the cheque, after having been lost by him, has been misused by the non-petitioner. In the circumstances, therefore, in my view, to secure the ends of justice and keeping in view the defence of the

petitioner which is right from the inception of the case, it would be in the interest of justice to get the said cheque examined from a handwriting expert at the cost of the petitioner so that the truth may come before the trial Court. In this view of the matter, the criminal miscellaneous petition deserves to be allowed.

The criminal miscellaneous petition is allowed. The orders impugned dated 19-3-2005 and 6-9-2005 passed by the trial Court and the Revisional Court respectively, are set aside. The matter is remanded to the trial Court to get the cheque in question examined by a handwriting expert at the cost of the petitioner. The stay petition stands disposed of.

(H.R. PANWAR), J.

mcs